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10/721,829	11/24/2003	Michael Barth Venturino	KCX-669 (19587)	4748
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DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER	
			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
			MAIL DATE	DELIVERY MODE
			04/30/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/721,829

Applicant(s)

VENTURINO ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-6 and 12-33 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 12-16, 21-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed January 16, 2008 have been fully considered but they are not persuasive.

With respect to arguments regarding the prior art of Mesek: Applicant argues that the prior art cited against the claims in the last Office action mailed October 17, 2007 has previously been overcome by amendments to the claims suggested by Exrs. Hill and Zalukaeva, and that said Exrs. Hill and Zalukaeva indicated that Mesek does not teach all of the limitations of claim 1 as currently written. This statement does not appear anywhere in the record of this application. Further, the Mesek reference that was applied against claim 1 at the time was U.S. Patent No. 4,960,477, not U.S. Patent No. 4,670,011, the prior art reference of Mesek that was applied in the last Office action by the current examiner. Applicant also noted that Examiner Hill suggested that the front portion be defined better in the claims, which applicant has not done. There appear to be no other limitations added to claim 1 after that interview other than the inclusion of the limitation of claim 26, also suggested by said examiners in the interview summary to which applicant refers.

Applicant further argues that Mesek does not teach that each of the flaps 26 of Mesek, when in an unfolded state, do not extend beyond the width of the front portion. This is not persuasive for two reasons: (1) applicant's argument depends once again upon a complete definition of the front portion that is not recited in the claims, and (2) the side flaps in their entirety lie outside the width of the front portion as claimed. The front portion of Mesek can be defined anywhere between the start of the middle portion and the front end of batt 114, since all that is required of the front portion in the claim is that it defines an outermost lateral periphery and has a width. Any front portion defined between the start of the middle portion and a point in

the front area of batt 114 that is wider than the middle portion defined an outermost lateral periphery in the form of a portion of each of the side edges created by cutting lines 30 and has a width defined between those portions. The side flaps 26 extend beyond the periphery defined by any of those front portions. Since applicant has not defined the front portion further, and Mesek teaches front portions that would meet all of the limitations of claim 1, the prior art of Mesek still anticipates claim 1.

The balance of applicant's arguments is directed to perceived advantages of the claimed article as set forth in claim 1. These arguments, alone or in combination with applicant's previous arguments addressed *supra*, are not sufficient to overcome the rejection of claim 1 under 35 U.S.C. 102.

Claim Objections

2. Claim 26 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 26 recites that once each of the lateral flaps has been folded, the middle portion includes areas that have a basis weight that is at least twice the basis weight of the front portion and the rear portion. Claim 1 from which claim 26 depends recites "the middle portion having a basis weight where the lateral flaps have been folded that is at least twice the basis weight of the front portion where the flaps are not located". Thus, the limitation of claim 26 has already been recited in claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-6, 12-16, 21-23 and 26-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Mesek (U.S. Patent No. 4,670,011).

With respect to **claim 1**: Mesek teaches an absorbent article 10 comprising: an outer cover material 16; a liner 12; and an absorbent structure 14 positioned between the outer cover material 16 and the liner 12, the absorbent structure 14 including a front portion, a rear portion, and a middle portion, the front portion having a width, the absorbent structure 14 further comprising a pair of opposing lateral flaps 26 folded at least onto the middle portion defined by central portion 28 of the absorbent structure, each of the flaps 26, when in an unfolded state, extending beyond the width of the front portion. Examiner's position is based upon the fact that no clear boundaries for the front portion are recited in claim 1. Claim 1 only requires that the front portion have a width and define an outermost lateral periphery. The front portion of Mesek can be defined anywhere between the start of the narrower middle portion and the front end of batt 114. (Figs. 5,6) Any portion defined between the start of the middle portion and a point in the front area of batt 114 that is wider than the middle portion, defines an outermost lateral periphery in the form of a portion of each of the side edges created by cutting lines 30 and has a width defined between those portions is a front portion that anticipates the claimed front portion. The side flaps 26 extend beyond the periphery defined by any of those front portions, thus the prior art of Mesek anticipates claim 1. As can be seen from Fig. 4, each of the flaps 26 has a

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width adjacent to the middle portion that is necessarily from about 25% to 100% of the width of the middle portion, since each flap 26 when folded completely covers either a second flap 26 or the middle portion 28 and said flaps 26 have an outer edge that coterminates with the side edges of the middle portion 28. (Col. 7, lines 24-47)

With respect to **claim 3**: The middle portion is narrower than the front portion and the back portion. (Fig. 2)

With respect to **claim 4**: As can be seen from Fig. 4, each of the flaps 26 has a width adjacent to the middle portion that is necessarily from about 33% to 100% of the width of the middle portion, since the flaps have an outer edge that coterminates with the side edges of the middle portion 28 and each flap when folded either completely covers a second flap 26 or the middle portion 28. (Fig. 4) Thus each flap has a width that is about 100% of the width of the central portion 28, i.e. the said middle portion.

With respect to **claim 5**: Each of the flaps completely covers either a second flap or the middle portion 28 of the core as can be seen in Fig. 4, thus each flap has a width adjacent to the middle portion that is from about 50% to 100% of the width of the middle portion.

With respect to **claim 6**: As can be seen in Fig. 2, the absorbent structure 14 has an hourglass-like shape.

With respect to **claim 12**: The lateral flaps 26 are connected to the middle portion and wherein each of the flaps 26 is separated from the front portion by a first slit in the form of cutting line

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30 and separated from the rear portion by a second slit in the form of a second cutting line 30.

With respect to **claim 13**: The absorbent structure 14 defines a longitudinal axis that extends from the front portion to the rear portion, the first slits 30 and the second slits 30 being substantially perpendicular to the longitudinal axis. (Fig. 2)

With respect to **claim 14**: The absorbent structure 14 defines a longitudinal axis that extends from the front portion to the rear portion, the first slits 30 and the second slits 30 extending generally in a diagonal direction in relation to the longitudinal axis.

With respect to **claim 15**: The absorbent structure 14 necessarily has a generally uniform basis weight when in an unfolded state, as the flaps 26 are constructed from the same material as the remainder of core 14. (Col. 7, lines 25-38, Col. 8, lines 20-22)

With respect to **claim 16**: The absorbent structure 14 defines a longitudinal axis that extends from the front portion to the rear portion, the first slits 30 and the second slits 30 being curved and thus extending in a non-linear fashion in relation to the longitudinal axis. (Col. 7, line 41)

With respect to **claim 21**: The absorbent article 10 is a diaper. (Col. 7, line 5)

With respect to **claim 22**: The absorbent structure 114, a second embodiment of structure 14, comprises superabsorbent particles. (Col. 10, lines 26-33)

With respect to **claim 23**: The absorbent structure 14 comprises pulp fibers and superabsorbent

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particles. (Col. 8, lines 20-22, Col. 10, lines 26-33)

With respect to **claim 26**: Once each of the lateral flaps 26 have been folded, the middle portion necessarily includes areas that have a basis weight that is at least twice the basis weight of the front portion and the rear portion, since the front portion and rear portion of structure 14 are of uniform thickness and material with the remainder of structure 14, namely the central portion 28 and each flap 26.

With respect to **claim 27**: Once each of the lateral flaps 26 have been folded, the middle portion includes areas that have a basis weight that are at least twice that of the front and rear portions, i.e. at least 100% greater, which overlaps the range of an area having a basis at least 150% greater than the basis weight of the front portion and the rear portion once said flaps 26 have been folded.

With respect to **claim 28**: Once each of the lateral flaps have been folded, the middle portion includes areas that have a basis weight that is at least twice the basis weight of the front portion and the rear portion, i.e. 100% greater, which overlaps the range of an area having a basis weight at least three times the basis weight of the front portion and the rear portion once said flaps 26 have been folded.

With respect to **claim 29**: The front portion includes a center area and two opposing lateral areas and the rear portion also includes a center area and two opposing lateral areas, as can be seen in Fig. 2. Once each of the lateral flaps 26 have been folded, the middle portion 28, the center area of the front portion, and the center area of the rear portion necessarily each have a

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basis weight that is at least 150% greater than the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, since the basis weight of the two opposing lateral areas and the front portion is uniform with respect to the basis weight of the center area of the front portion and the middle portion prior to folding.

With respect to **claim 30**: The front portion includes a center area and two opposing lateral areas and the rear portion also includes a center area and two opposing lateral areas, and wherein, once each of the lateral flaps 26 have been folded, the middle portion 28, the center area of the front portion, and the center area of the rear portion each have a basis weight that is necessarily at least twice the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, since the outer edge of each flap 26 is coterminal with the edges of the medial portion 28, and the flaps 26 and medial portion 28 have a uniform basis weight prior to folding. (Figs. 2,4)

With respect to **claim 31**: Once each of the lateral flaps 26 have been folded, the middle portion has a basis weight that is necessarily at least three times the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, and the center area of the front portion and the center area of the rear portion have a basis weight that is at least twice the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, since the outer edge of each flap 26 is coterminal with the edges of the medial portion 28, and the flaps 26, medial portion 28 and the central area of said front portion of absorbent structure 24 have a uniform basis weight prior to folding. (Figs. 2,4)

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With respect to **claim 32**: Once each of the lateral flaps 26 have been folded, the middle portion 28 comprises two layers of material. (Fig. 4)

With respect to **claim 33**: Once each of the lateral flaps 26 have been folded, the middle portion comprises three layers of material. (Fig. 4)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 24 and 25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mesek ('011).

With respect to **claim 24**: The limitation "the absorbent structure comprises an air formed web" constitutes product-by process claim language. Mesek teaches that the absorbent structure 114 is formed from at least one fibrous web 131,133 that are airblown webs. (Col. 15, lines 18-22, Col. 17, lines 20-30) The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113. The burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983) Alternatively, it would be obvious to one of ordinary skill in the art to modify the article of Mesek so as to have an absorbent structure that comprises an air-formed web with a reasonable expectation of success to provide an equally well-performing absorbent structure to that explicitly taught.

With respect to **claim 25**: The absorbent structure 14 of Mesek meets all of the limitations of claim 25. With regard to the limitation of "has a basis weight of from about 100 gsm to about 2,000 gsm", when the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has

been established when the reference discloses all the limitations of a claim except for a property or function (in the present case, a particular range of basis weights) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763